REMARKS

I. Introduction

In response to the Office Action dated March 2, 2005, and the Advisory Action dated June 13, 2005, claims 1 and 2 have been amended. Claims 1-8 remain in the application. Claim 8 was withdrawn from consideration by the Examiner as allegedly drawn to a non-elected invention. Entry of these amendments, and reconsideration of the application, as amended, is requested.

II. Amendments

The amendment to the specification indicated above serves to correct an obvious typographical error. The word "calls" inadvertently and incorrectly appeared where "cells" was clearly intended. This amendment introduces no new matter.

Applicants' attorney has made amendments to the claims as indicated above. These amendments were made solely for the purpose of clarifying the language of the claims, and do not introduce new matter or raise new issues for examination.

Claim 1 has been amended to make more clear and explicit that this method involves the production of an indicator cell that can be used to amplify (and thereby detect) envelope-defective retrovirus. This amendment is supported by the application as originally filed, by both the language of claim 1 as originally filed and by the specification at page 4, lines 1-10.

Claim 2 has been amended to replace "carried" with "incorporated", which is also supported by the specification at page 4, lines 1-10.

Entry of these amendments is respectfully requested.

III. Restriction Requirement

On page (2) of the Office Action, the Examiner alleged that claim 8, submitted with Applicants' Amendment dated November 23, 2004, was directed to an invention that is independent or distinct from the invention originally claimed because claim 8 is drawn to a method of detecting envelope defective retroviruses whereas the "elected" invention is drawn to a method of amplifying an envelope defective virus. Applicants respectfully disagree with this assertion and further maintain that this restriction is improper.

The Examiner is respectfully reminded that this application is a national stage filing of a PCT application, and is therefore subject to 35 U.S.C. §372(b)(2) and PCT Rules 13.2 and 13.4. According to PCT Rule 13.2, the requirement for unity of invention is fulfilled where claims share one or more of the same or corresponding special technical features that define a contribution which each of the claimed inventions makes over the prior art. Under PCT Rule 13.4, it is permitted to include a reasonable number of dependent claims, even where the features of any dependent claim could be considered as constituting in themselves an invention.

The subject matter encompassed by claims 1-8 all relates to the inventive concept of detecting envelope defective retroviruses. Each of the claimed embodiments share technical features corresponding to using an indicator cell to amplify, and thereby detect, envelope-defective retrovirus. All of the claims are linked by this inventive concept, and each of claims 2-8 depends from and incorporates all of the features recited in claim 1. Accordingly, under PCT Rules 13.2 and 13.4, the unity of invention requirement is fulfilled by all of claims 1-8.

Not only are all of these claims linked by the common inventive strategy for amplifying envelope-defective retrovirus, but also there is no serious burden placed on the Patent and Trademark Office to examine the subject matter of claims 1-8 together. For example, a search and examination finding the method of claim 1 patentable would necessarily support the patentability of a method of detecting envelope-defective retrovirus using that method. Moreover, the added aspect of using the amplification method to detect envelope-defective retrovirus does not create a burden on the examination process.

Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. Because claim 8 was presented prior to the final Office Action, this claim is entitled to consideration. Applicants presented claim 8 in a good-faith effort to facilitate identification of allowable subject matter, and would appreciate a good-faith effort on the part of the Patent and Trademark Office to provide a meaningful examination of claims properly presented.

In the Advisory Action dated June 13, 2005, the Examiner stated that the restriction requirement is maintained for the reasons set forth previously. Applicants respectfully note, however, that the reasons set forth previously (a simple assertion that claim 8 is drawn to an invention that is independent or distinct) fail to acknowledge that this application is a national stage filing of a PCT application, subject to 35 U.S.C. §372(b)(2) and PCT Rules 13.2 and 13.4. The

Examiner has proffered no reason why this dependent claim lacks unity of invention with parent claim 1 under the applicable PCT Rules. Applicants urge the Examiner to reconsider the restriction requirement and rejoin claim 8.

IV. Non Art Rejection

On page (11) of the Office Action, claim 2 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Examiner indicated that "carried by a virus particle" was unclear. In response, Applicants have replaced "carried" with "incorporated".

V. Double Patenting Rejection

At page (3) of the Office Action, claims 1-7 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-16 of U.S. Patent No. 5,994,136 for the reasons set forth in the previous Office action in the rejection of claims 1-3.

At page (5) of the Office Action, claims 1-7 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-9 of U.S. Patent No. 6,428,953 for the reasons set forth in the previous Office action in the rejection of claims 1-3.

In view of the amendments to the claims, Applicants maintain that these rejections are now moot.

VI. Prior Art Rejections

On page (7) of the Office Action, claims 1-3 and 5-6 were rejected under 35 U.S.C. §102(b) as being anticipated by Sadaie et al., Virology, 1992, Vol. 187, pages 604-611 (Sadaie). On page (8) of the Office Action, claims 1-7 were rejected under 35 U.S.C. §102(e) as being anticipated by Naldini et al., U.S. Patent No. 5,994,136 (Naldini). On page (10) of the Office Action, claims 1-5 and 7 were rejected under 35 U.S.C. §102(b) as being anticipated by Ory et al., PNAS, 1996, Vol. 93, pages 11400-11406 (Ory).

In making each of the above rejections, the Examiner noted that Applicants' claims require that the envelope gene be integrated, but "there is no requirement as to when said integration occurs". Accordingly, Applicants have amended claim 1 to clarify that the integration of the envelope gene into the indicator cell occurs prior to contacting the indicator cell with an exogenous envelope-defective retrovirus.

In view of the amendments to the claims, Applicants maintain that these rejections are now moot.

VII. Conclusion

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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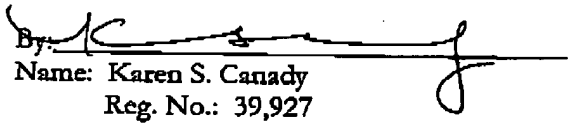
By: 
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